# DISTRICT OF COLUMBIA
## DOH Office of Adjudication and Hearings

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| DISTRICT OF COLUMBIA<br>DEPARTMENT OF HEALTH<br>Petitioner,<br><br>v.<br><br>NEWCOMB DAY CARE CENTER and<br>ANDREA CANNON<br>Respondents | Case Nos.: I-00-40411<br>I-00-40412<br>(consolidated) |

**FINAL ORDER**

## I. Introduction

On March 23, 2001, the Government served two Notices of Infraction upon Respondents Newcomb Day Care Center and Andrea Cannon. One Notice of Infraction (No. 00-40411) charged Respondents with violating 29 DCMR 328.3, which requires child development facilities to provide "[a]dequate indoor space suitable for the daily program." The Notice of Infraction alleged that the violation occurred on March 9, 2001 at 333 H Street, N.E. and sought a fine of $100.

The other Notice of Infraction (No. 00-40412) charged Respondents with violating 29 DCMR 325.5, which requires staff members in each child development facility to be "trained to administer emergency first aid," and 29 DCMR 315.2, which requires the director of a child development center to be responsible for supervision and administration of the center, including

the designation of a teacher to be responsible in the director's absence. The Notice of Infraction also alleged that the violations occurred on March 9, 2001. It alleged that the violations occurred at 331 H Street, N.E., next door to the facility at issue in Case No. 00-40411.

Respondents filed timely pleas of Deny to both Notices of Infraction, and I held an evidentiary hearing on April 27, 2001. Nan Reiner, Esq. represented the Government and Harry Spikes, Esq. represented Respondents. At the outset of the hearing, the Government moved to dismiss Notice of Infraction 00-40411 with prejudice, and I granted that motion. Accordingly, the hearing proceeded only on the allegations in Notice of Infraction 00-40412.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the documents introduced into evidence, I now make the following findings of fact and conclusions of law.

## II. Findings of Fact

Newcomb Day Care Center ("Newcomb") operates a child development facility at 331 H Street, N.E. Respondent Andrea Cannon is the president of Newcomb. The facility cares for up to 12 infants between the ages of three months and two years. On March 9, 2001, Maureen Ryan, an inspector employed by the Department of Health, visited the facility to conduct a licensing renewal inspection. At the time of her visit, three teacher's aides were present at the facility supervising the children, but no teacher was present. Ms. Ryan asked who was in charge. The aides were confused by the question and none of them identified any person who was in charge. The director of the 331 H Street facility was LaShawn Hester, also known as LaShawn Moore. She was not present at the facility, and no one there knew where she was. Several days after Ms. Ryan's visit, Newcomb informed the Department of Health that it terminated Ms.

Hester from her employment due to her "failure to return to work." Petitioner's Exhibit ("PX") 103.

Ms. Ryan reviewed various personnel records for the staff members on duty at the 331 H Street facility on March 9. Those records showed that two of the staff members had no training in first aid. Those staff members admitted that they did not have first aid training. The third staff member, Ms. Mary B. Washington, had received a certificate attesting that she had been trained in first aid. The certificate, however, was valid for two years, with an expiration date of December 2000.

Ms. Ryan also visited the Newcomb child development facility at 333 H Street, N.E., which is located next door to the 331 H Street facility. The facility at 333 H Street cares for children between two and six years old. Separate licenses authorize operation of the 331 and 333 H Street facilities. While they are located in adjoining houses that have been remodeled to serve as child care facilities, there are no interior passageways or other means of walking from one facility to another without going outside and walking to the door of the other facility. Both facilities usually keep their doors locked while the children are inside. Two teachers were on duty at 333 H Street when Ms. Ryan arrived. Although at least one of the teachers had a first aid certificate that had not expired, both teachers told her that they had no responsibility for the facility next door.

## III. Conclusions of Law

### A. The § 315.2 Violation

Every child development center in the District of Columbia must have a director who is present for at least one-third of the time that children are at the center. 29 DCMR 315.1. The Government alleges that Respondents violated 29 DCMR 315.2, which provides that the director "shall be responsible for supervision and administration" of the center, including "[d]esignation of a teacher to be responsible in the absence of the director." 29 DCMR 315.2(e). No teacher was present at the 331 H Street facility on March 9, 2001, and the aides on duty did not identify a teacher (or anyone else) who was in charge of the facility on that date. This demonstrates that no teacher had been designated to be responsible for supervision and administration of the facility in the director's absence.

The presence of three aides on the premises was not an acceptable substitute for a teacher. To be qualified as a teacher, a person must satisfy the education and experience requirements of 29 DCMR 315.4.[1] By contrast, a teacher's aide is qualified if he or she can "demonstrate, to the satisfaction of the director, the ability to work well with children." 29 DCMR 315.8. By requiring the director to designate a teacher, not an aide, to be responsible when the director is not present, § 315.2(e) mandates that a person with the training and experience demanded of a teacher must supervise the facility in the director's absence.

[1] In summary, those requirements include: 1) a bachelor's degree in a relevant field with at least 15 hours of early childhood education courses; 2) two or more years of college, including at least 15 hours of early childhood education courses, and one year's experience in a child development facility; 3) a high school diploma or equivalent and at least three years' experience in a child development facility; or 4) experience as a teacher or assistant teacher in a licensed child development facility if the person has been awarded a child development associate credential. 29 DCMR 315.4.

Respondents contend that there were two teachers next door, and that they were able to supervise the 331 H Street facility. By their own admission, however, neither of those teachers had any responsibility for 331 H Street. That is sufficient to show that Ms. Hester had not designated either of those teachers to be responsible for 331 H Street.

Section 315.2 imposes various duties upon the director of a child development center. Ms. Hester, the director of the 331 H Street facility, is not a Respondent in this case. Nevertheless, Newcomb may be held liable for her violation of §315.2(e) because she was an employee of Newcomb when she committed the violation. 16 DCMR 3201.4. The Government introduced no evidence of Ms. Cannon's involvement in the violation, however. As a result, the charge against her of violating § 315.2(e) must be dismissed.

**B. The § 325.5 Violation**

Section 325.5 of 29 DCMR provides, in relevant part: "[S]taff shall be trained to administer emergency first aid, including control of bleeding and administration of artificial respiration." The Government contends that Respondents violated this rule on March 9, 2001 because no one on duty at the 331 H Street facility was properly trained in first aid on that date.[2] Respondents do not dispute that two of the aides on duty had not received first aid training, nor do they dispute that Ms. Mary B. Washington's first aid certification had expired in December

[2] The Government's theory of the case appears to be that at least one staff member on duty must be trained in first aid, not necessarily that every staff member must have such training. Because that interpretation of the rule is more favorable to Respondents than an interpretation requiring every staff member to be trained, and because Respondents (understandably) do not take issue with that interpretation, I need not decide whether the rule merely requires one staff member on duty to have first aid training.

2000. They argue, however, that Ms. Washington complied with the literal terms of the regulation because she had received first aid training at one time.

Section 325.5 promotes the safety of children enrolled in child development facilities by requiring the staff of such centers to know how to provide first aid in an emergency. Because medical knowledge is expanding and first aid techniques often are updated, § 325.5's purpose is not served by a holding that completing one first aid course perpetually qualifies a staff member as "trained to administer first aid" within the meaning of § 325.5. Moreover, it is likely that staff members in child development centers do not regularly need to use first aid techniques for responding to the most serious injuries; consequently, updated training may be necessary to ensure that their knowledge of such techniques remains current. In order to protect the safety of the children, therefore, a staff member's first aid training will satisfy § 325.5 only for a reasonable time after completion of the training.

What is a reasonable time? Neither § 325.5 nor any other rule identifies a time period within which a staff member's completion of first aid training will satisfy § 325.5. In this case, however, it is undisputed that the provider of Ms. Washington's first aid course specified that the training would remain effective for two years, until December 2000. If Respondents choose to satisfy § 325.5 by relying upon a first aid course whose effectiveness is expressly limited to two years, it is hardly unfair or unreasonable to hold them to the limitations of the course itself. The course provider's certification is *prima facie* evidence of the reasonable time within which the course can satisfy § 325.5. Absent other evidence (and there is no other evidence on this issue in the record), the certification of the very persons upon whom Respondents relied to provide the necessary training is sufficient to establish the period within which Ms. Washington's first aid

training was effective.[3] Because Ms. Washington had not completed her first aid training within a reasonable time on March 9, 2001, Newcomb violated § 325.5.

Here again, Respondents argue that the presence of a qualified staff member next door was sufficient to comply with the rule. Once again, however, the testimony of the teachers at the 333 H Street facility requires rejection of that argument. Because those teachers had no responsibility for operations at 331 H Street, Respondents can not rely upon whatever first aid training they may have had to satisfy § 325.5. The reference to "staff" in § 325.5 refers to the staff of an individual facility; it does not permit one facility to rely upon the staff of another, even if they are under common ownership.[4]

Respondents contend, however, that 29 DCMR 301.4 requires that the two facilities be treated as one in determining whether they comply with the rules at issue here. That section provides: "Only one (1) license shall be required for a child development facility located in separate buildings on the same grounds or premises and operated by one (1) person." It is not clear whether two adjoining houses with different addresses constitute the "same grounds or

[3] Either party might be able to rebut the *prima facie* case established by a course provider's certification. If, for example, a course provider certified that its training was effective for 25 years, the Government would be able to rebut that certification by expert testimony that the period was too long, or perhaps by testimony showing that the staff members at issue in fact did not retain the required knowledge. Conversely, if a provider certified that its training was effective for only a month, a facility could rebut the certification by showing, either by expert testimony or perhaps through the testimony of fact witnesses, that persons taking the course retained the required knowledge for a longer period.

[4] The danger of such reliance is readily apparent. In an emergency, a staff member at 331 H Street would have to leave the facility, go next door, wait for a locked door to be opened, and then locate a staff member with first aid training, resulting in a delay of several minutes. If the trained staff member at 333 H Street were away from the facility with the children, no one could provide needed first aid.

premises" within the meaning of §301.4.[5] It is not necessary to decide that issue, however. Newcomb is not seeking to be allowed to have only one license for the two locations. Because Newcomb obtained a separate license for the 331 H Street facility, it must comply with the rules applicable to a stand-alone facility without regard to whether it is in compliance at another separately licensed facility.

The initial subsection of 29 DCMR 325 requires the director of a child development facility to be responsible for compliance with all the provisions of § 325, including § 325.5. As noted above, Newcomb is liable for Ms. Hester's violation of the rules because she was an employee of Newcomb at the time of the violations. Thus, Newcomb is liable for violating § 325.5. The Government, however, has not pointed to any evidence of Ms. Cannon's involvement in the violation and the charge against her will be dismissed.

**C. Fines**

A violation of 29 DCMR 325.5 is a Class 3 infraction, for which a fine of $100 is authorized for a first offense. 16 DCMR 3222.2(j). A violation of 29 DCMR 315.2(e) is a class 4 infraction, for which a fine of $50 is authorized for a first offense. Newcomb, therefore, is liable for a fine of $150.

[5] Ms. Ryan testified that the Department of Consumer and Regulatory Affairs had required Newcomb to obtain separate certificates of occupancy for the two buildings at issue, leading her to conclude that the two houses were not the "same ground or premises." As noted in the text, I do not need to decide that issue in this case
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## IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

**ORDERED**, that, on the Government's motion, Notice of Infraction 00-40411 is **DISMISSED WITH PREJUDICE;** and it is further

**ORDERED,** that Respondent Andrea Cannon is **NOT LIABLE** for violating 29 DCMR 315.2 and 325.5 as alleged in Notice of Infraction 00-40412; and it is further

**ORDERED,** that Respondent Newcomb Day Care Center is **LIABLE** for violating 29 DCMR 315.2 and 325.5 as alleged in Notice of Infraction 00-40412; and it is further

**ORDERED,** that Respondent Newcomb Day Care Center shall pay a total of **ONE HUNDRED FIFTY DOLLARS ($150)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED,** that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code

§ 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7) (2001 ed.).

**FILED 01/04/02**

John P. Dean
Administrative Judge